

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.-03-11244-GAO

ERIC J. RENNIE; GREGG T. RENNIE;
JOHN FALL and PETER T. O'BRIEN,
Plaintiffs

vs.

FRANK C. MASHBURN and DOREEN E. MASHBURN,
Defendants

MEMORANDUM AND ORDER

January 23, 2006

O'TOOLE, D.J.

After consideration of the parties' briefing and oral arguments, I conclude that the motion by the defendant Doreen E. Mashburn ("Doreen") to vacate the default judgment (dkt. no. 18) must be GRANTED. Because the plaintiffs have failed to sustain their burden of showing that this Court may properly exercise *in personam* jurisdiction over Doreen, the default judgment is void, and relief from that judgment may properly be granted under Fed. R. Civ. P. 60(b)(4).

It does not appear either from the allegations of the complaint or other factual assertions presented by the plaintiffs in their opposition to Doreen's motion that she had sufficient contacts with Massachusetts to justify the exercise of personal jurisdiction either under the Massachusetts long-arm statute or under constitutional principles of due process. Her having witnessed (in California) her husband's signature on documents he directed into Massachusetts is by itself or in combination with the other circumstances that have been shown insufficient to amount to either her commission of a tort or transaction of business within Massachusetts, let alone her "purposeful availment" of the

protection of the laws of Massachusetts. Similarly, her having accompanied her husband on a trip to Massachusetts in which he met with one of the victims of his alleged fraud is insufficient in light of the ambiguity of her presence within the state. The plaintiffs have not offered a basis for concluding that her presence was in aid of her husband's tort, as distinguished from the normal social behavior of a spouse.

Because the basis for granting the Rule 60(b)(4) request is the conclusion that personal jurisdiction is lacking over Doreen, not only must the judgment against her be set aside, but also the complaint against her must be dismissed pursuant to Fed. R. Civ. P. 12(b)(2).

The application of Frank C. Mashburn for relief from the default judgment (dkt. no. 23) is DENIED.

January 23, 2006

DATE

\s\ George A. O'Toole, Jr.

DISTRICT JUDGE